



October 31, 2001

Mr. Joe Jackson  
Assistant City Attorney  
City of College Station  
P. O. Box 9960  
College Station, Texas 77842-9960

OR2001-4992

Dear Mr. Jackson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 154142.

The City of College Station (the "city") received a request for the personnel files of three specified city employees. In a subsequent letter, the requestor excluded motor vehicle information, personal information that is confidential pursuant to section 552.024 of the Government Code, income tax forms, and retirement and insurance beneficiary designation forms. You state that you have released information that has been previously disclosed to the requestor. You claim that the remaining submitted information is excepted under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(1) excepts from disclosure information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime if release of the information would interfere with the detection, investigation, or prosecution of crime. You have provided a letter from a Brazos County Assistant District Attorney which states that the release of the requested personnel files would interfere with the prosecution of a criminal case. The assistant district attorney explains that the requested personnel files are those of the State's main witnesses in the criminal case. Although the jury has found the defendant guilty, the assistant district attorney states that these same witnesses will testify at the punishment phase of the case and that the defense attorney has stated that he will appeal the jury's verdict. Based on these representations, we find that release of the submitted personnel files would interfere with the detection, investigation, or prosecution of crime. *See, e.g.,* Open Records Decision Nos. 474 (1987), 372 (1983) (where incident involving allegedly criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information which relates to incident), *see also* Open Records Decision No. 586 (1991) (need of another governmental

body to withhold requested information may provide compelling reason for nondisclosure under section 552.108). Therefore, we conclude that the city may withhold the submitted information under section 552.108(a)(1) of the Government Code. Having found the information excepted under section 552.108(a)(1) of the Government Code, we need not address your remaining asserted exceptions.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, reading "Jennifer Bialek".

Jennifer Bialek  
Assistant Attorney General  
Open Records Division

JHB/sdk

Ref: ID# 154142

Enc: Submitted documents

c: Cameron D. Reynolds  
Law Office of Jim James  
P. O. Box 1146  
Bryan, Texas 77806  
(w/o enclosures)